

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

UNITED STATES OF AMERICA,	§	
Plaintiff/Respondent,	§	
	§	
V.	§	CR. No. C-03-70 (1)
	§	C.A. No. C-07-342
NOE NICOLAS GARZA,	§	
Defendant/Movant.	§	

**ORDER GRANTING MOTION TO AMEND AND
ORDER FOR GOVERNMENT TO FILE SUPPLEMENTAL RESPONSE AND ANSWER**

On October 22, 2007, the Clerk received from Defendant/Movant Noe Nicolas Garza (“Garza”) a motion seeking to amend his § 2255 motion pursuant to Rule 15(a), Fed. R. Civ. P. to add additional claims. (D.E. 75.) The motion was signed on October 17, 2007 and indicates that it was mailed the same date. (D.E. 75 at 21.) It is thus deemed filed as of October 17, 2007.¹

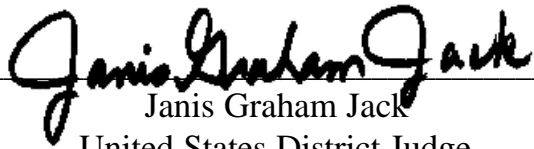
Rule 15(a), Fed. R. Civ. P., allows a party to amend “once as a matter of course at any time before a responsive pleading is served ...” See also Rule 12, RULES GOVERNING SECTION 2255 PROCEEDINGS FOR THE UNITED STATES DISTRICT COURTS (2007) (allowing the application of the Federal Rules of Civil Procedure, to the extent that they are not inconsistent with any statutory provisions or the § 2255 rules). In the instant case, the government filed its response on the same date that Garza filed his motion to amend – October 17, 2007. The government served its response on Garza by mail, and thus it appears that Garza filed his motion to amend prior to being served with the government’s response. Accordingly, Rule 15(a) is applicable and allows the requested amendment.

¹ Houston v. Lack, 487 U.S. 266, 276 (1988) (a document is deemed filed by a *pro se* prisoner when it is delivered to prison authorities for mailing, postage pre-paid). See also United States v. Young, 966 F.2d 164, 165 (5th Cir. 1992) (providing benefit of Houston v. Lack to *pro se* prisoner in § 2255 proceedings). Cf. Rule 3(d), RULES GOVERNING SECTION 2255 PROCEEDINGS FOR THE UNITED STATES DISTRICT COURTS (§ 2255 motion is deemed timely if inmate deposits it in the institution’s internal mailing system on or before the last day for filing).

Accordingly, Garza's motion to amend is GRANTED, and shall be treated as a supplemental § 2255 motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255.

The government shall file a supplemental answer or response to Garza's new claims not later than thirty days after entry of this Order. Additionally, pursuant to Rule 5(d) of the RULES GOVERNING SECTION 2255 PROCEEDINGS FOR THE UNITED STATES DISTRICT COURTS (2007), Garza may file a combined reply to both the government's initial response and its supplemental response not later than thirty days after service of the government's supplemental response.

ORDERED this 29th day of October, 2007.



Janis Graham Jack
United States District Judge